IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Bhinya Ram & Ors. vs. The State of Rajasthan.

1. D.B.Cri. Appeal No.447/1982

Surja Ram & Ors. vs. The State of Rajasthan

2. D.B.Cri. Appeal No.458/1982

Bhagwan Ram & vs. The State of Rajasthan

3. D.B.Cri. Appeal No.461/1982

Under Section 374 Cr.P.C. against the judgment dated 30.09.82 passed by the Sessions Judge, Jodhpur in Sessions Case No.130/1980.

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Date of Judgment: 14th November, 2007.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE DEO NARAYAN THANVI

Mr.Sandeep Mehta,]
Mr.P.N.Mohnani] for the appellants.
Mr.Vijay Bishnoi]

Mr.JPS.Choudhary, Public Prosecutor.

Mr.Niranjan Singh with
Mr.M.K.Garg for the complainant.

BY THE COURT :(PER HON.MR.BHAGWATI PRASAD,J.)-

These appeals have been filed by the accused appellants against the decision of the court of Sessions Judge , Jodhpur in Sessions case No.130/1980 dated 30th September, 1982.

In this case 15 accused persons were tried, out of which 9 were convicted for major offences. 4 were convicted for minor offences, out of which one Amra Ram is since dead and 2 were acquitted. Thus, the present appeal is on behalf of all 12 persons. 9 were convicted for major offences and 3 for minor offences.

The prosecution was initiated on the basis of an oral report lodged by PW/13 Pokar Ram on 14.07.88 at about 04.00 PM at Police Station Luni. According to the report, there was a dispute in the village Feench, in between the families of Godaras and Panwars. In this report, which is not considered as first information report, names of four persons, along with others, were mentioned. The 'rapat' was drawn in the Rojnamcha. Thereafter at around 04.00 PM Umed Singh, Sub-Inspector, recorded Ex.P/29. Then Umed Singh ,along with Tej Singh , proceeded towards the field and Sub-Inspector Jabar Singh was given the charge of the police station. At the field Umed Singh met PW/1 Pabu Ram, whose statement was recorded at 06.00

PM and sent to police station , Luni for recording the first information report. Consequently, at 07.15 PM, Ex.P/23 , the first information report No.68/80, was recorded under section 147 ,148, 149, 307 and 302 IPC.

The story given in the first information report was that at about 09.00 AM on 14.07.80 Pabu Ram PW/1 had gone to his field which is about 1 ½ Km. southern side of village Feench. He was accompanied by his brother Heera Ram, deceased, Arjun Ram, Jugtaram, deceased, and Khangara Ram, decease, and Har Lal s/o Kheta Ram and Har Lal s/o Phusa Ram. On their way, from the field of Mukta Ram, a tractor was taken. His mother Smt.Meera also arrived there. When they were engaged in cleaning process of the field, Bhera Ram, PW/6 arrived and informed that Surja Ram, Sarpanch, Sukhram and Harlal had collected people from the dhani and they are likely to engage in a conflict with them. On receiving such information, Smt.Meera and Khinyaram were put into the tractor and sent to the village, and remaining persons remained in the filed . At about 01.00 PM the accused came and assaulted. The assault was on different places which culminated into the death of 3 persons , namely Heera Ram, Jugta Ram and Khangaram. On such report, investigation was conducted and charge sheet was filed against 15 persons. The case was committed for trial. At the trial,

the accused were charged under under sections 147, 302, 302/149, 307, 307/149 IPC. The accused denied their charges and claimed trial.18 witnesses were examined and 90 documents were exhibited. The accused were examined under section 313 Cr.P.C. They denied their complicity.

Arguing the appeal, the learned counsel for the appellants submitted that out of the 15 accused charge sheeted, accused Prahlad Ram, Puna Ram , Kola Ram and Amra Ram were convicted under sections 325/149, 3232 and 147 IPC, Amra Ram accused has since died. The other 9 accused were convicted as under :

1	*2*	*3*	*4*
1	Bhanwara Ram	U/s 302 IPC u/ss 302/149 IPC	Sentenced to imprisonemnt for life and a fine of Rs.4,000/- and in default three years' R.I. Sentenced to imprisonment for life and a fine of Rs.4000/- and in default to undergo 3 yrars' R.I.
2	Sukh Ram	U/s 302 IPC U/s 302 /49 IPC	Sentenced to imprisonment for life and a fine of Rs.4,000/- and in default to undergo 3 years' R.I.. Sentenced to imprisonment for life and a fine of Rs.4,000/- and a fine of Rs.4,000/-, in default to undergo 3 years' R.I.

1	*2*	*3*	*4*
3 4 5 6 7 8	Mehka Ram Kheraj Ram Bhiya Ram Bhagwana Ram Har Lal Karna Ram	U/s 302/149 IPC	Sentenced to imprisonment for life and a fine of Rs.4,000/- and in default to further undergo 3 years' R.I.
	Bhiya Ram also convicted -	u/s 325 IPC u/s 323/149 IPC	Sentenced to 2 ½ years' R.I. And a fine of Rs.500/- and in default to undergo six months' R.I. and, sentenced to 3 months" R.I.
9	Surja Ram	U/s 302 IPC u/s 302/149 IPC	Sentenced to life imprisonment and a fine of Rs.4,000/- Sentenced to life imprisonment and a fine of Rs.4,000/- , in default to undergo 3 years' R.I.

The accused Pokar Ram and , Roopa Ram were acquitted. Thus, the present appeal is on behalf of 12 persons. Arguing the appeal, the learned counsel for the appellants submitted that the various accused appellants have remained behind the bars for sufficient period, which is as under :-

1	*2*	*3*
1	Bhinya Ram	2 years 8 months and 8 days
2	Bhanwara Ram	10 years and 11 days
3	Bhangwan Ram	2 years 7 months and 10 days
4	Mehka Ram	3 years 4 months and 16 days
5	Surja Ram	2 years, 7 months and 10 days

1	*2*	*3*
6	Har Lal	2 yeasrs, 7 months and 10 days
7	Sukh Ram	10 years and 11 days
8	Khairaj Ram	2 years, 8 months and 2 days
9	Karna Ram	2 years, 7 months and 6 days.

Those who were not sentenced to life imprisonment by the judgment under appeal, namely Prahlad, Puna ram, Kola Ram and Amraram, were sentenced to the period already undergone which was around 2 years, and 2 months. The learned counsel for the appellants submitted that the incident relates to the year 1980. Two of the accused persons have served out for more than 10 years and 7 have served out for more than 2 years and 4 have served out around 2 years. He gives up the challenge to the incident and submits that the incident was a melee. The documents on record support that there were 100s of people involved in the incident. There had been false implication. That false implication is established by the acquittal of Pokar Ram and Roopa Ram. Their acquittal has become final, as no appeal was filed against them. So also acquittal of Prahlad Ram, Puna Ram, Kola Ram and Amra Ram under section 302/149 IPC show that the learned trial court was nursing a doubt that the entire assembly had a common object of committing murder. When the fact of common object of murder of the entire assembly has not been

established by the findings of the trial court, then in appeal his assertion is that Section 149 IPC cannot be pressed into service against other persons. The assembly was also one , and in one assembly, there cannot be different common object. In any case , he submits that the sentence undergone by various accused persons, is one which can be considered to be sufficient. After 27 years of the incident, if the accused are sent behind the bars, then a case of animosity which had its effects in 1980, would get evoked, and result into bursting of fresh fire in between the parties. He submits that at best the offence can be one, where it can be said that the accused had an intention of causing death, without knowing the actual impact of their actions, which was a melee and actual participation was not possible to be determined and the prevarications in the statement of the eye witnesses establish that any implicit reliance on their statements, would result into miscarriage of justice.

Learned counsel offers that the 9 accused persons may be ordered to pay Rs.75,000/- each to the next of kin of the three deceased and this will be in addition to the already undergone sentences. It would be a sufficient deterrent and would maintain the harmony which has trickled down in the past 27 years.

Per contra, the learned public prosecutor submitted that it was indiscreet act of the accused persons , whereby they made an assault on the complainant party and killed three persons. They being large in number, had the upper hand , and have achieved a mileage over the complainant party.

We have heard the learned counsel for the parties and have perused the record.

From the record we find that the initial version which has come on record show that the names of all the accused persons were not contained in it. The initial version do not contain the names of all the accused persons. Witnesses admit that 5 other accused were also there, who have been unidentified. 2 accused have been acquitted believing alibi, while disbelieving the prosecution witnesses who made identical allegations as against the acquitted accused as well.

In this background, we are constrained to observe that possibility of naming of innocent people, cannot be ruled out, and that contingency puts us to our guard. The tendency of over implication is seen in the statements of the four eye witnesses,

wherein they have named 15 persons, and have also named 5 unknown persons, out of which 6 have not been found by the trial court to share the common object, then the attribution of the common object to eliminate the deceased to the rest of the 9 persons, is a situation which is hard to conceive.

Nine persons have served out sizable amount of sentence, which has been quoted by us herein above. If this much of the sentence has been served out , and the incident goes back to 27 years, this is in the back ground that trial court has found two innocent people implicated and acquitted them. From record we find that the implication of innocent people cannot be ruled out. Definite finding about the author of fatal injury is not possible to be given. It was an unruly mob, from which the deceased had a chance to flee, but avoided by sending two persons on scooter and in these circumstances we feel that the conviction under section 302 IPC be converted to one under section 304-I IPC and the sentence already undergone , be considered to be sufficient substantive sentence.

Each of the accused would deposit Rs.75,000/- as fine, out of which Rs.6 lacs will be distributed to the 3 deceased persons'

next of kin and rest of the amount will be treated as fine. The amount of compensation has been awarded on the representation of the learned counsel, for which one month's time is given for depositing. On being deposited , the same may be tendered to the next of kin of the 3 deceased , to the tune of Rs.2 lacs each. Rest of the amount will be fine, to be deposited in State Treasury.

In the result, the appeals of accused Bhiyan Ram, Bhanwara Ram, Bhagwan Ram, Mehka Ram, Surja Ram, Har Lal, Sukh Ram, Kheraj Ram and Karna Ram are partly allowed. The conviction of accused appellants under section 302 /149 IPC is converted to under section 304-I/149 IPC. Rest of the convictions are maintained. The substantive sentence already awarded to the appellants is considered sufficient for meeting the ends of justice. They are on bail , their bail bonds stand cancelled , they need not surrender to their bail bonds. The accused will deposit the fine and compensation as ordered.

The appeal of accused Prahlad Ram, Puna Ram, Kola Ram and Amara Ram is not considered on merits and they have already been let out on the sentence already undergone and the incident has not been disputed by the learned counsel for the

appellants.

(DEO NARAYAN THANVI), J. **(BHAGWATI PRASAD), J.**

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